

**ALASKA STATE LEGISLATURE**  
**SENATE TRANSPORTATION STANDING COMMITTEE**

March 9, 2021

1:33 p.m.

**MEMBERS PRESENT**

Senator Robert Myers, Chair  
Senator Mike Shower, Vice Chair  
Senator Peter Micciche  
Senator Jesse Kiehl

**MEMBERS ABSENT**

Senator Click Bishop

**COMMITTEE CALENDAR**

SENATE BILL NO. 74

"An Act providing for and relating to the issuance of general obligation bonds for the purpose of paying the cost of state infrastructure projects, including construction, communications, major maintenance, public safety, and transportation projects; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 74

SHORT TITLE: G.O. BONDS: STATE INFRASTRUCTURE PROJECTS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/05/21	(S)	READ THE FIRST TIME - REFERRALS
02/05/21	(S)	TRA, FIN
02/25/21	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)
02/25/21	(S)	-- MEETING CANCELED --
03/02/21	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)
03/02/21	(S)	Heard & Held
03/02/21	(S)	MINUTE(TRA)
03/09/21	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

JOHN BINDER, Deputy Commissioner of Aviation

Executive Director

Alaska International Airport System

Department of Transportation and Public Facilities (DOTPF)

Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions on GO Bond Airport Improvement Projects (AIP) in SB 74.

NEIL STEININGER, Director

Office of Management and Budget

Office of the Governor

Juneau, Alaska

**POSITION STATEMENT:** Presented a PowerPoint on SB 74, General Obligation (GO) Bonds: State Infrastructure Projects.

BEN WHITE, Director

Division of Program Development and Statewide Planning

Department of Transportation and Public Facilities (DOTPF)

Juneau, Alaska

**POSITION STATEMENT:** Answered questions on GO Bond projects in SB 74.

CHRISTOPHER MCCONNELL, Director

Facilities & Campus Services

University of Alaska Anchorage (UAA)

Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on GO Bond projects in SB 74.

CHERI LOWENSTEIN, Director

Division of Support Services

Department of Natural Resources (DNR)

Juneau, Alaska

**POSITION STATEMENT:** Answered questions on GO Bond projects in SB 74.

WILLIAM MILKS, Senior Assistant Attorney General

Legislation & Regulations Section

Administrative Services Division

Department of Law (DOL)

Juneau, Alaska

**POSITION STATEMENT:** Answered questions on constitutional issues related to GO Bonds in SB 74.

## **ACTION NARRATIVE**

[1:33:16 PM](#)

**CHAIR ROBERT MYERS** called the Senate Transportation Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Kiehl, Shower, and Chair Myers. Senator Micciche arrived shortly thereafter.

**SB 74-G.O. BONDS: STATE INFRASTRUCTURE PROJECTS**

[1:33:51 PM](#)

CHAIR MYERS announced the consideration of SENATE BILL NO. 74 "An Act providing for and relating to the issuance of general obligation bonds for the purpose of paying the cost of state infrastructure projects, including construction, communications, major maintenance, public safety, and transportation projects; and providing for an effective date."

[1:35:19 PM](#)

JOHN BINDER, Deputy Commissioner of Aviation; Executive Director, Alaska International Airport System, Department of Transportation and Public Facilities (DOTPF), Anchorage, Alaska, stated that SB 74 uses generic language for the projects in the capital project summary. He offered to speak to the projects generally and provide a few examples. The department has additional information on the projects. Overall, the Alaska International Airport System is fairly built out throughout the state, he said. It is very rare that the state has any new airport construction projects.

[1:36:04 PM](#)

MR. BINDER stated that most of the airport projects are to rehabilitate or reconstruct airport infrastructure. He described three typical airport projects, detailing work at the Bethel, Klawock, and Kotzebue Airports. Although the Bethel airport is the second busiest airport in the state as it serves surrounding villages, the main runway is dilapidated and needs complete reconstruction. This project will require removing all the pavement and reconstructing it, including repaving the shoulders, lighting replacement and associated taxiway construction. The Klawock Airport on Prince of Wales Island has seen deplanements increase dramatically. To mitigate congestion, the project consists of constructing a parallel runway to increase safety and enlarge the parking apron. The Kotzebue Airport needs its crosswind runway reconstructed, as well as lighting replacement, dust palliative and removal of part of the general aviation parking ramp to bring the airport into compliance with FAA requirements.

[1:39:05 PM](#)

CHAIR MYERS pointed out that some projects include federal match, such as the Kotzebue Airport project, but others do not. He asked which airports receive match.

MR. BINDER responded that the state must provide about five to six percent match for all airport projects. The discussions are ongoing as to whether the bond bill could be used as a portion of the match. However, the funding amounts listed in SB 74 represent only a small portion of the overall project cost. The rest of the funding is derived from the federal Airport Improvement Program (AIP) funds.

[1:40:08 PM](#)

CHAIR MYERS clarified that most or all projects in SB 74 could theoretically have federal match.

MR. BINDER restated that all of the airports require a state match to receive federal funding. However, none of the dollar amounts fully cover the total project costs.

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SENATOR KIEHL referred to the airport projects for \$3 million to \$4.25 million. He said if this represents 6 percent of the project, the project costs would exceed the total cost of most airports in Alaska. He asked if all the projects would use federal funding or if some will be 100 percent GO Bond funding.

MR. BINDER responded that the bond request for the Bethel Airport Project is \$4.2 million. However, the overall project cost is \$35.7 million. The remaining \$31 million will be federally funded, he said. The state must pay the 5 percent match and the \$4.2 million covers the match. The Deadhorse Airport project funding request is for \$2.9 million. However, the total project cost for the taxiway and drainage project is \$23 million. While the overall bond cost is small, it generally will cover or be considered the match, he said.

[1:42:28 PM](#)

SENATOR SHOWER asked how the department will use any surplus GO Bond funding.

MR. BINDER directed attention to the Bethel Airport project request for \$4.2 million. He said that any additional money over the match will free up additional federal funding to allocate to other capital projects. He characterized it as offsetting federal dollars, which will make those funds available for other projects.

1:43:41 PM

SENATOR MICCICHE asked how the excess GO bond funding will be allocated to other projects and if he would identify the specific projects.

MR. BINDER answered that the current total funding for airport projects in SB 74 is \$32 million, which means that \$32 million will be freed up for other airport projects. He explained that DOTPF overprescribes its projects each year since some projects will slip. Since the department cannot predict the specific projects that will encounter problems, the department will not allocate the \$32 million to other projects until the funding becomes available. He offered to provide the airport spending plan to the committee and to identify several of the airport projects that are next in line.

1:45:23 PM

SENATOR MICCICHE asked for any contingency placed on the projects for the GO Bonds and the federal match. He explained that the legislature appropriates funding to DOTPF. Sometimes this funding does not directly connect to the projects the legislature intended to fund. DOTPF must have internal reasons for the reallocation of funds but it would be helpful to better understand DOTPF's reasoning.

MR. BINDER responded that the department identifies specific aviation projects to the legislature each year that will use federal funding. He assured members that the GO Bond funding will not fund additional projects outside these designated projects. He offered to provide additional information to the committee.

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SENATOR MICCICHE said he was struggling to understand this process, which seems a little circular. He related his understanding that DOTPF was requesting more GO Bond authority for the 5 percent federal match than needed but it is not clear where those excess funds will be spent. He related his understanding that all the projects are not listed in the bill even though DOTPF anticipates excess funding.

SENATOR KIEHL echoed Senator Micciche's concerns. The statutes require that all GO Bond bills must identify for the voters the specific projects being funded. He suggested that this raises legal and constitutional concerns.

[1:48:31 PM](#)

MR. BINDER responded that if SB 74 does not pass, all the projects listed in the bill will still go forward. These projects are listed in the [Rural Airport System Airport Improvement Program (AIP)] spending plan. The GO Bond funding allocated to these projects means that \$32 million in federal dollars not required on these projects will flow over to the next projects in the aviation program. He offered to provide the five-year AIP spending plan, which identifies projects that are ready to bid and construct. In addition, he offered to provide five or so projects in the aviation spending plan that are the likely ones to receive any excess funding.

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SENATOR SHOWER suggested that the GO Bond funding only shows a small segment of the aviation plan. He asked him to identify the overall spending plan so the committee better understands which projects will be approved. He said there were multiple sources of funding discussed at this hearing.

MR. BINDER offered to provide the information so the committee can better understand the GO Bond proposal in SB 74.

[1:50:57 PM](#)

SENATOR MICCICHE asked members to consider the most efficient use of unrestricted general fund (UGF) and the reasons for issuing GO bonds. He highlighted that the department has 90 percent match for these projects so it might be better for the department to use the normal process to fund them. Instead, the department could prioritize the projects without such high match. He acknowledged that SB 74 would fund projects scattered throughout the state. However, these projects may not be the best choice for the GO Bond proposal, he said.

[1:52:04 PM](#)

NEIL STEININGER, Director, Office of Management and Budget, Office of the Governor, Juneau, Alaska, began a PowerPoint on SB 74, General Obligation (GO) Bonds: State Infrastructure Projects. He offered to recap the process the administration used to develop the GO Bond proposal. One goal was to provide geographic distribution that would benefit Alaska communities. Funding airport projects helps to reach that goal, he said. Another goal was to identify projects in existing plans that for a variety of reasons the state has not been able to fund. While these projects will eventually be completed via the AIP spending plan, advancing some of these airport projects now means the department will not need to use general funds to complete them

in the future. Further, this allows DOTPF to potentially leverage federal funding through airport match for future capital budget federal appropriations to the AIP program. Using GO Bonds gives the department a little more flexibility to construct a portion of a larger project by using future funding for projects in the AIP program, he said.

MR. STEININGER explained that including highway Statewide Transportation Improvement Program (STIP) projects in SB 74 provides certainty to the construction industry by allowing the industry to conduct advance planning for projects. He remarked that advance planning really benefits the construction industry. The administration included projects with federal funds to give certainty to the STIP award in the future, he said.

MR. STEININGER summarized that the GO Bond proposal in SB 74 will address geographic distribution, the immediacy of some projects, and future planning for other projects.

[1:55:22 PM](#)

SENATOR MICCICHE remarked that he covered the political and project scheduling. He asked whether the 95 percent match rate is the most efficient use of bond dollars or if the projects should be ones that have a lower rate of federal match or no match at all.

MR. STEININGER answered that some airport projects are eligible for match and others are not, depending on how the projects fit in the AIP program. He offered to identify which projects the department believes are eligible for match in the existing AIP federal appropriations and awards.

[1:56:47 PM](#)

CHAIR MYERS asked for specifics for the Cordova Airport project, [State of Alaska Capital Project Summary, FY 2022 GO Bond] reference number 63288.

MR. BINDER related that the Cordova Airport project was to improve the airport fence and security installations to meet Federal Aviation Administration (FAA) and Transportation Security Administration (TSA) requirements.

MR. BINDER explained that the Deadhorse Airport funding was for taxiway expansion and erosion. There's a shortage of lease lots, so this project will also connect the airfield to the lease lot areas. The Fairbanks Airport project is to reconstruct the shorter runway, he said.

1:57:51 PM

CHAIR MYERS, after determining this project pertained to the Fairbanks International Airport (FIA), related his understanding that the FIA was effectively self-sustaining and did not require additional funding. He asked why this project was included in the GO bond proposal.

MR. BINDER responded that typically the Fairbanks and Anchorage International Airport System (AIAS) capital improvements are funded through their own rates and fees' structure.

CHAIR MYERS asked why the Fairbanks Airport would receive \$1.9 million.

MR. BINDER deferred to Mr. Steininger.

MR. STEININGER explained that the administration identified airport projects that could be moved forward. He acknowledged that the Fairbanks International Airport's ability to bond independently was not necessarily considered. He agreed that the administration could consider alternative financing mechanisms to fund specific projects and yet achieve the same goals.

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SENATOR SHOWER said he would like to see a broader list of the airport projects. He offered his view that some projects were included to achieve political goals. He would like confirmation on project criteria.

MR. STEININGER asked for clarification that the question was to identify when the projects were scheduled in the AIP and which ones were pulled forward in the schedule.

SENATOR SHOWER agreed that was correct. He said this raises why, when, what and where questions about the administration's GO Bond proposal. He maintained that he would like to see the broader picture.

MR. STEININGER offered to provide the information.

2:02:18 PM

MR. BINDER reviewed the remaining airport projects. The Homer Airport project would completely rehabilitate the runaway and taxiway including subsurface work. He stated that there are no current projects for the Nome and Utqiagvik Airports, but these airports do have capital needs. DOTPF will work with the region



and community to identify projects. Further, there is not a current project for the Wasilla Airport, which is owned by the city. DOTPF will work with the community to identify the airport needs.

2:03:27 PM

CHAIR MYERS highlighted that the Wasilla Airport is located on the road system about an hour's drive from the Anchorage International Airport. He asked whether including this project in the bond proposal was the best use of funds.

MR. BINDER responded that the Wasilla Airport is heavily used by general aviation aircraft. Even though the Wasilla Airport is near a larger airport, it must complete capital projects to achieve compliance with FAA requirements.

2:04:56 PM

CHAIR MYERS referred to the eight Dalton Highway Repairs and Upgrades, reference 63277. He asked for any overlap or duplicate effort in the project as listed.

MR. STEININGER said the capital project summary sheet, with reference numbers, draws the connection to the STIP. He deferred to Mr. White to speak to various Dalton Highway repairs.

2:06:21 PM

BEN WHITE, Director, Division of Program Development and Statewide Planning, Department of Transportation and Public Facilities (DOTPF), Juneau, Alaska, stated that the STIP not only identifies projects by milepost but also by phases. Some projects may be in one or more phases, he said. For example, the Dalton Highway project lists milepost 109-121 but it also lists milepost 109-145. The milepost 109-145 is the parent project. A smaller portion of the project, such as milepost 109-121, may be constructed at a different time, he said.

2:07:24 PM

CHAIR MYERS reviewed the GO Bond Listing and Capital Project Summary by project and reference number. The first project with questions was the Hyder Float Breakwater Replacement, reference number 63284.

2:08:04 PM

SENATOR KIEHL asked if the Hyder Float is owned by the state or the municipality. He asked for the project status, whether the permitting process was complete and if it was bid ready.

MR. STEININGER deferred to Mr. Binder.

MR. BINDER offered to research this and report back to the committee.

[2:08:59 PM](#)

CHAIR MYERS turned to the Kenai Spur Road Improvements project, reference number 63297.

[2:09:09 PM](#)

SENATOR KIEHL asked if this funding was for Phase 1 or Phase 2 of the project.

MR. WHITE explained that Phase 1 of the Kenai Spur Road Improvements Replacement Project is for utility relocation and Phase 2 was for construction of a 5-lane highway to increase capacity and improve safety.

SENATOR KIEHL asked if both phases were ready to go out to bid.

MR. WHITE answered that the utility relocation is scheduled prior to the 2021 construction season. However, the actual road construction will begin next summer, he said.

[2:10:26 PM](#)

CHAIR MYERS turned to the Kodiak Chiniak Highway project, reference 63281.

[2:10:42 PM](#)

SENATOR KIEHL stated that he reviewed the Statewide Transportation Improvement Program (STIP). He related that this bond request is for ten percent of the total the Kodiak Chiniak Highway project cost of \$23.6 million for the road rehabilitation from milepost 5 to 21. He asked if the design work was being funded with GO Bonds or if the funds were for actual construction.

MR. WHITE offered his belief that the Chiniak Highway milepost 5 to 21 project is slated for construction in 2023.

[2:11:56 PM](#)

CHAIR MYERS turned to the Kotzebue Cape Blossom Road project, reference 63304.

[2:12:08 PM](#)

SENATOR KIEHL related his understanding from the STIP that the New Road Cape Blossom Road was in the permitting phase. He asked if there was any local match. He said it also appeared from the

STIP as though there was an earmark. He asked for the project status.

MR. WHITE answered that earmarks did not cover the entire construction costs so the Kotzebue Cape Blossom Road project is being constructed in phases. He reported that Phase 1 is ready for construction and is scheduled to be completed in 2022. Phase 2, which is included in SB 74, is planned for construction in 2022 and 2023.

2:13:20 PM

SENATOR KIEHL asked whether the Kotzebue Cape Blossom Road project is permitted for construction in 2022 and 2023. He noted that delays can often occur during the permitting process.

MR. WHITE answered that DOTPF has completed its environmental documents and permitting for Phase 1. He offered to research and report back to the committee on the status of the permitting process for Phase 2.

2:13:56 PM

CHAIR MYERS turned to the Municipal Harbor Facility Grant Fund project, reference 49780. He asked whether the five harbors listed are the ones that will receive the planned maintenance, expansion, and replacement funding or if any new harbor projects not listed will be funded instead.

MR. STEININGER responded that the intention is to fund the projects currently on the Municipal Harbor Facility Grant Fund list. He explained that the process OMB used is like the one the Department of Education and Early Development Major Maintenance Grant Fund uses to prioritize projects. He characterized the development of the Municipal Harbor Facility Grant Fund list as a robust process. This funding will give the department some flexibility to fund additional projects if some projects come in under budget. He said he was not certain how a new harbor project would affect the list ranking.

2:16:03 PM

MR. WHITE explained that the Harbor Facility Grant Program was created in 2006. The process for inclusion includes a call for projects, scoring and evaluating them, and awarding contracts based on project criteria. The last call for projects was a year ago, he said. DOTPF plans to proceed with funding based on the information provided in the GO bond bill proposals. DOTPF will use the same process for this funding as it did for previous Harbor Facility Grants.

2:16:51 PM

CHAIR MYERS asked whether DOTPF will have another round of harbor applications related to this GO bond proposal.

MR. WHITE confirmed the department does not have any plans for another round of applications.

2:17:20 PM

SENATOR MICCICHE asked whether the Harbor Facility Grant Fund Program was established in 2006.

MR. WHITE answered yes.

SENATOR MICCICHE said he is familiar with the Harbor Facility Grant Program. He stated that several harbor projects in SB 74 were selected outside of the Harbor Facility Grant Program list. He asked why the administration did not simply increase the grant fund and prioritize projects rather than to fund harbor projects outside the standard process.

MR. WHITE deferred to Mr. Steininger.

2:18:50 PM

MR. STEININGER acknowledged that the Unalaska Harbor and Craig Harbor projects were not on the Harbor Facility Grant Program list but were separate requests for harbor needs. He was not sure why these projects do not appear in the MHGF program list.

2:19:43 PM

SENATOR MICCICHE asked why the two projects were not on the Harbor Facility Grant Program list.

MR. STEININGER offered to research this and report back to the committee.

2:20:28 PM

CHAIR MYERS turned to the Nome Port Road Improvements project, reference number 63305.

SENATOR KIEHL asked for the amount of the project because it appears in the STIP at \$6.5 million but the GO Bond request is for \$5 million.

MR. WHITE offered to research this and report back to the committee.

[2:21:13 PM](#)

CHAIR MYERS referred to the Parks Highway Little Goldstream Creek Bridge Replacement project, reference number 63306. He asked if this project replaces the bridge at milepost 315 just north of Nenana.

MR. WHITE answered that he believed that is correct.

[2:21:44 PM](#)

CHAIR MYERS referred to the Richardson Highway Milepost 117-151 Rehabilitation and Widening, and Milepost 268-343 Passing Lanes project, reference number 63307. He said a significant portion of the project was constructed in 2012. However, it appears that this road section once again needs rehabilitation. He asked what will be done during this project to ensure that this road will last longer.

MR. WHITE answered that this project might be a more in-depth reconstruction of the roadbed whereas the prior project may have been limited to superficial paving. He offered to check with the regional DOTPF office and report back to the committee.

[2:23:33 PM](#)

CHAIR MYERS turned to the Seward Highway Mile 76-81 project, reference number 63278.

SENATOR MICCICHE asked if this project includes resurfacing. He offered his view that the potholes in the area affect life safety in Portage area.

MR. WHITE answered yes.

[2:24:44 PM](#)

CHAIR MYERS turned to the Sterling Highway Milepost 8-25 project, reference number 63302.

SENATOR KIEHL asked how many construction seasons this project will span.

MR. WHITE offered that per the STIP the project is scheduled for four construction seasons. However, he will confirm this.

SENATOR KIEHL said it seemed hard for the public to travel if this project is accelerated with the GO Bond funding.

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SENATOR MICCICHE asked how this dovetails with the new construction on the bypass highway.

MR. WHITE answered that this project is for new construction and realignment of the Sterling Highway.

SENATOR MICCICHE said that will address Senator Kiehl's concern because the project will remove a highway curve until it reaches the realignment point and connects to the old highway.

MR. WHITE answered that is correct.

[2:28:48 PM](#)

SENATOR MICCICHE reverted to the Sterling Highway Miles 8-25 project, reference number 63279. He asked whether the bridge construction was part of this project or if the bridge was in a separate project.

MR. WHITE answered that the bridge was included in Stage 3 of the Sterling Highway Miles 8-25 Project.

[2:28:33 PM](#)

CHAIR MYERS referred to the University of Alaska (UAA) Building Energy Performance Upgrades project, reference number 45642. He explained that it takes 36 years to recover the GO Bond costs. He asked if this is the best funding method.

[2:29:46 PM](#)

CHRISTOPHER MCCONNELL, Director, Facilities & Campus Services, University of Alaska Anchorage, Anchorage, Alaska, answered that the energy savings were a conservative estimate. He stated that some components, such as air handler units and boilers align strategically with some of the more energy efficiency elements such as LED lighting upgrades or pneumatic conversions. He anticipated that the energy savings will be more comprehensive, but the project also includes other components that are beyond their useful life.

[2:30:53 PM](#)

CHAIR MYERS referred to the UAA Integrated Sciences Building (CPISB) Combined Heat and Power Energy Savings Project, reference number 62656. He stated the summary indicates that this will reduce annual operating costs. He asked for the current annual cost.

MR. MCCONNELL answered that the current operating costs are estimated at \$132,000 per year.

[2:31:58 PM](#)

CHAIR MYERS asked if members had any questions on the projects discussed at the March 2, 2021, hearing.

[2:32:07 PM](#)

SENATOR KIEHL expressed an interest in the Department of Law addressing the legal and constitutional issues.

[2:32:32 PM](#)

CHAIR MYERS stated that last year there were fewer wildfires in Alaska. He recalled DNR commented that the money would be rolled into firebreak maintenance. He asked how much funding will roll over and if that would significantly reduce the need for GO Bond funding for the Statewide Firebreak Construction Program, reference number 62961.

[2:33:36 PM](#)

CHERI LOWENSTEIN, Director, Division of Support Services, Department of Natural Resources, Juneau, Alaska, replied that this funding typically comes from the preparedness budget. The most that she has seen unspent is 100,000.

CHAIR MYERS clarified that the amount that was rolled over from last year was 100,000.

MS. LOWENSTEIN offered to research this and report back to the committee. She recalled that most of the prior year rollover amounts were much smaller.

[2:34:27 PM](#)

CHAIR MYERS asked Mr. Milks to address constitutional questions on GO Bonds.

[2:34:55 PM](#)

WILLIAM MILKS, Senior Assistant Attorney General, Legislation & Regulations Section, Administrative Services Division, Department of Law, Juneau, Alaska, related his understanding that the committee would like to know what can and cannot be funded through general obligation (GO) bonds. Article 9, Section 8, of the Alaska Constitution provides authority for GO Bonds, which is basic bonding by a state or local government. Under the GO bonding process, the legislature passes a bill to authorize borrowing by issuing GO bonds for a certain purpose. The GO Bond bill does not become effective unless the voters approve the bond proposal. Voter approval is necessary because the state is obligated to repay the bonds since its full faith and credit is

pledged. Article IX, Section 9 of the Alaska Constitution authorizes general obligation bonds for limited purposes. The purpose for SB 74 is capital improvements, he said.

[2:37:32 PM](#)

MR. MILKS reiterated that the committee would like to know what can and cannot be funded by GO Bonds. The Alaska Supreme Court applies a plain ordinary language interpretation of the words in the Alaska Constitution.

MR. MILKS explained that two Alaska Supreme Court cases address capital improvements. He said that the question relates to "capital" and "improvements". The court ruled that "capital" means some type of real or personal property asset. The court gave a broad interpretation of an "improvement" to mean some type of "betterment." In 1962, the Alaska Supreme Court heard the City of Juneau v. Hixson case. The City of Juneau attempted to issue \$1 million in general obligation (GO) bonds to purchase land and convey the land to the state for the purpose of expanding its capital site. The Alaska Supreme Court ruled that this was a land purchase and not a capital improvement; that since the land would be conveyed, it would not be an asset for the CBJ. Thus, there was no expectation from the state that it would be used for the purpose it would be conveyed.

[2:39:22 PM](#)

MR. MILKS said in 1970, the Alaska Supreme Court considered Wright v. City of Palmer. In that case, the Alaska Supreme Court ruled that the City of Palmer could use GO Bonds to finance a land purchase for the subsequent construction and manufacturing of a processing facility because the City of Palmer will own a tangible asset. The court said that the bond issue and the plan of expenditure did not violate the capital improvement requirement of the Alaska Constitution. Thus, the court determined the proposed facility was a valid capital improvement. In its decision, the court also cautioned against reading the Hixson case so narrowly. The court struck down the bond issue because no capital improvement would have resulted from the expenditure of the proceeds. The vice in the Hixson case was that raw land would have been acquired with the proceeds and would then have been donated to the State of Alaska as a proposed capitol site. As a result of the plan, the City of Juneau would have been left with no tangible asset in place of the indebtedness, he said.

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MR. MILKS said that those two cases generally describe capital improvements and includes much of what the committee discussed today, such as roads, bridges, harbor facilities, buildings, schools, and libraries are considered capital improvements. However, the court declined to provide a specific definition of a capital improvement so a common ordinary understanding of capital improvement would be used, which includes the examples the court provided.

[2:41:22 PM](#)

SENATOR KIEHL highlighted that several projects in SB 74 have issues under the definition of capital improvement projects since they do not provide the state with any tangible assets. For example, resource assessments, hazard assessments, resource surveys and geology field work are functions that seem problematic, he said. He related that several attorney general opinions have been issued over the years that suggest that ordinary building maintenance rather than building new facilities or rebuilds would not be considered capital improvements under the Alaska Constitution. In the late 70s, an attorney general opinion applied a durability test. He recalled that opinion ruled that trucks do not fit in the definition. He asked for the rationale the Department of Law used to determine how some of these projects qualify as capital projects under the constitution.

[2:41:54 PM](#)

MR. MILKS referred members to the 1962 and 1970 Alaska Supreme Court cases and common-sense language for guidance. In terms of ordinary maintenance, the Alaska Supreme Court in the City of Juneau case declined to provide a definition of capital improvements. However, it was clear the court considered "capital" and an "improvement" of that "capital" would qualify. The Alaska Supreme Court cited a New Hampshire case that said that one would apply an ordinary sense of a permanent improvement or betterment as distinguished from ordinary repair or routine maintenance. He offered his view that this concept would still apply. He said this means capital improvements are not routine maintenance or ordinary repair. However, the only two cases that apply are quite old. In general, the court intended that the state or local government had the ability to use public finance to provide for improvements but the improvements must be capital improvements.

[2:44:52 PM](#)

MR. MILKS turned to Senator Kiehl's reference to an attorney general opinion issued in the late 70s that indicated a fire

truck and his view that this would not be a capital improvement. He argued that this interpretation falls into a gray area based on the language of the Alaska Constitution. This is an old attorney general opinion but he reviewed it. He suggested going back to the language in the Alaska Constitution. It certainly could be argued that a fire truck is a capital asset.

MR. MILKS related his understanding that the administration's goal was to identify projects for a general obligation (GO) Bond proposal. The bill will go through the legislative process to identify which projects will be part of the proposal. He agreed that some projects in SB 74 fall in the gray area. He was unsure whether a fire engine is a capital project but his colleagues 40 years ago did not think so.

[2:46:54 PM](#)

SENATOR KIEHL said he has perhaps stronger opinions than Mr. Milks about some of the surveys, assessments, and field work as capital improvements. He recalled the committee previously touched on the specificity of the projects. He would like to expand on it. He said that Title 24, Legislature and Lobbying and Title 15, Elections, have requirements for GO Bonds to list specific projects, specific locations, and specific dollar amounts. Although he supports school major maintenance and addressing these needs, it is difficult for voters to determine the amount of funds and where those funds will be spent. He expressed concern how the legislature can satisfy the law. Further, SB 74 will essentially allow the commissioner of each department to reallocate the GO Bond funds. This essentially creates a slush fund, which does not appear to comply with Title 24 and Title 15, he said.

[2:48:49 PM](#)

MR. MILKS acknowledged that state law related to general obligation bonds requires a brief description of each capital project, the location, and the dollars that will be apportioned from the total bond project. The committee has identified some projects that need more detail and as this process moves forward, more detail should be provided, he said. In terms of reallocation of funds, SB 74 includes standard language used in all general obligation bond bills that provides departments the ability to reallocate between projects. He explained that this language acknowledges that a specific project may use less funds or something may arise that prevents the project from moving forward. In those instances, the reallocation language allows the commissioner to shift the funds to another project that is

identified within the allocation. This provides some flexibility for administering the projects, he said.

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CHAIR MYERS related his understanding of the justification for allowing reallocation between projects. He highlighted the justification for the bill is that the state has shovel-ready projects. However, if the projects are ready for construction, the state should know the costs. He acknowledged that the need for contingencies. However, the voters should know the project costs and those costs should have some limits, he said.

MR. STEININGER agreed that even when a project is shovel ready, the cost estimate might change or the project may not go forward. The reallocation language allows for shifts in funding when projects are under or over budget. He was unsure whether a limitation for the amount of reallocation has ever been put in a general obligation bond bill.

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CHAIR MYERS expressed concern that voters might vote to approve a project in their district but the money could get shifted to a project in another district.

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MR. STEININGER said that the administration proposed projects it plans on moving forward. He characterized the contingency language as language that allows some flexibility for underbudget or overbudget situations.

[SB 74 was held in committee].

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There being no further business to come before the committee, Chair Myers adjourned the Senate Transportation Standing Committee meeting at 2:55 p.m.